IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2002 of 2003
with
FIRST APPEAL Nos 2003 to 2016 of 2003
with
FIRST APPEAL NOs 2021, 2023 to 2028, 2030 to 2035, 2037 to 2041, 2044 to 2047, 2050, 2051, 2053 to 2058 of 2003
with
FIRST APPEAL NOs 2086 to 2095, 2097, 2099, 2101, 2103, 2105, 2106, 2107, 2109, 2110, 2111, 2112, 2116 to 2130 of 2003

with
FIRST APPEAL Nos 2217 to 2282 , 2060 to 2085 of 2003
with
FIRST APPEAL NOs 2154 to 2162, 2164, 2166, 2167, 2169 to 2187 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HEIRS OF DECD.JIVABHAI BECHARBHAI PRAJAPATI

Appearance:

MR SN SHELAT ADVOCATE GENERAL with
MR AD OZA GOVERNMENT PLEADER for Appellant No.
MR RN SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 04/12/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

These groups of first appeals are directed against separate judgments rendered by the learned Assistant Judge, Sabarkantha at Himmatnagar in groups of references with main Reference Nos.4628, 4240, 4527, 4571 and 3371 of 1989. We are disposing of all these first appeals by a common judgment as all these appeals and the corresponding references relate to acquisition of lands of village Sabli in Idar taluka of Sabarkantha district. All the lands in question were acquired for the Guhai reservoir project or the Guhai Jalagar Yojana. For all the lands in question, the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was published in the Official Gazette on 20.3.1986. Hence at the request of the learned counsel for the parties, all the appeals have been heard together and are being decided by this common judgment.

2. The lands and buildings in village Sabli, Idar taluka of Sabarkantha district were acquired under the above notification and they went into submergence as a result of the Guhai reservoir project (Guhai Jalagar Yojana). The Land Acquisition Officer awarded compensation at the rate of Rs.2/-per sq.mt. for the land and at the rate of Rs.150 to Rs.300/- per sq.mt. for buildings. Upon references being made under Section 18 of the Act at the instance of the respondent-claimants, after examining the material on record, the Reference Court awarded additional compensation of Rs.36/- per sq.mt. for the land and granted 20% increase in the compensation for buildings. For arriving at the above rate of compensation, the Reference Court relied on the judgment of this Court dated 15.6.2001 of Division Bench of this Court (to which one of use was party) in First Appeal Nos.7301, 7303 to 7305 of 1999 with connected matters. When First Appeal Nos.2002 to 2016 of 2003 were admitted on 10.10.2003, the Court passed the following order:-

"Admit.

Learned AGP Mr K.T. Dave states that against the decision dated 15.6.2001 of the Division Bench (Coram: M.R. Calla & D.H. Waghela, JJ.) in the group of First Appeal Nos.7301 of 1999 and allied matters with First Appeal Nos.7346 and 7439 of 1999, the State has approached the Supreme Court. Hence, this group of appeals be listed for final hearing after the decision of the Apex Court in those matters."

Thereafter, the other matters in the groups came to be admitted. Since all the appeals pertain to acquisition of lands in the same village as stated above, the appeals have been listed for hearing today.

3. At the hearing, Mr SN Shelat, learned Advocate General with Mr AD Oza, learned Government Pleader point out that the Special Leave Petitions filed against the above judgment dated 15.6.2001 in First Appeal No.7301 of 1999 and connected matters were dismissed by the Hon'ble Supreme Court on 31.10.2003 by the following order :-

"Delay condoned.
The special leave petitions are dismissed."

4. Mr RN Shah, learned counsel for the respondents in several matters in these groups has also pointed out that in most of the appeals the additional compensation and other amounts awarded by the Reference Court is less than Rs.30,000/- and that in a number of judgments this Court has taken the view that where the amount involved in such appeals is less than Rs.30,000/-, the appeals would not be entertained and shall be dismissed only on the ground of smallness of the amount involved. Strong reliance has been placed on the order dated 30.3.2000 of another Division Bench of this Court in First Appeal Nos.7163 to 7198 of 1999, which appeals also pertain to compensation for lands of the same village Sabli acquired for the same purpose by the same notification dated 20.3.1986.

Although we have taken the aforesaid submission into consideration and we do find that in more than 30 appeals, additional compensation awarded by the Reference Court is less than Rs.30,000/-, since there are other appeals where the additional compensation awarded by the Reference Court is more than Rs.30,000/- we are required to consider the submissions made by the learned Advocate General instructed by the learned Government Pleader on merits, for which purpose, we would obviously refer to

the judgment dated 15.6.2001 of this Court in First Appeal Nos.7301 of 1999 and connected matters which has become final in view of the dismissal of the Special Leave Petitions. In the said judgment also, after noticing that in several matters additional amounts of compensation awarded by the Reference Court were less than Rs.30,000/-, this Court did examine the merits of the contentions urged on behalf of the Government in the said matters and on merits those contentions came to be rejected. In that view of the matter, it would appear that the Government ought not to have pressed these appeals.

5. However, Mr Shelat, learned Advocate General has submitted that in respect of acquisition of some of the lands of the same village Sabli under the same notification dated 20.3.1986, the Land Acquisition Officer had awarded compensation at the rate of Rs.2/per sq.mt. (just as the Land Acquisition Officer had awarded compensation at the rate of Rs.2/- per sq.mt. in the present matters also as per the award rendered in July 1988) and the Reference Court had awarded additional compensation of only Re.1/- per sq.mt. and only 5% increase was granted as compensation for buildings as per the judgment and award dated 16.6.1997 rendered by the learned Extra Assistant Judge, Sabarkantha at Himmatnagar in Land Acquisition Cases Nos.2190 to 2330 of 1989 and 1075 to 1079 of 1990. The said judgment came to be challenged by the State of Gujarat in First Appeal Nos.1498 to 1643 of 1998 and the said appeals came to be summarily dismissed by this Court by judgment dated 16.2.1999. Thus, compensation awarded at the rate of Rs.3/- per sq.mt. became final. The judgment of the learned Extra Assistant Judge in the above land acquisition cases was not challenged by the claimants. The aforesaid decision dated 16.2.1999 of this Court was cited on behalf of the Government and the Reference Court was bound by the said judgment, according to the submission of the learned Advocate General.

The learned Advocate General also submitted that the enhancement of compensation amount by the Reference Court from Rs.2/per sq.mt. awarded by the Land Acquisition Officer to Rs.38/- per sq.mt. was highly excessive and calls for interference of this Court.

It is further submitted that the claimants were given free plots for residential purpose as admitted in the cross-examination of the witnesses examined on behalf of the claimants and, therefore, the compensation awarded by the Land Acquisition Officer at the rate of Rs.2/- per

sq.mt. was adequate compensation.

6. On the other hand, Mr RN Shah, learned counsel for the respondents in several matters supported the judgments of the Reference court and has also submitted that if some of the claimants could not challenge or have not challenged the judgment dated 16.6.1997 of the learned Extra Assistant Judge in one group of land acquisition cases, that cannot bind the other claimants who had pursued their land reference cases before the Reference Court and who have succeeded before the Reference Court on the strength of subsequent judgments of this Court in respect of the other lands of the same village Sabli acquired under the same notification dated 20.3.1986 for the same project called Guhai Reservoir Project.

Mr RN Shah further reiterated that in majority of the cases, additional compensation awarded by the Reference court is less than Rs.30,000/- and, therefore, in view of the consistent practice of this Court not to entertain appeals involving small amounts, these appeals also deserve to be dismissed where the amount is less than Rs.30,000/-.

Mr Shah also submitted that the claimants are entitled to get interest on the amount of solatium as held by the Apex Court in Sunder vs. Union of India, 2001 (7) SCC 221 = 2001 (3) GLH 446 as followed by this Court in Special Land Acquisition Officer vs. Kodarbhai Jenabhai, 2002 (2) GLH 435 and in Special Land Acquisition Officer vs. Ramanbhai Haribhai, 2002 (4) GLR 3196. Mr Shah also relied on the decision of the Apex Court in Vijay Cotton and Oil Mills Ltd. vs. State of Gujarat, AIR 1991 SC 656 in support of his contention that the claimants are entitled to pray for interest on the amount of solatium even though the claimants have not preferred any separate appeals or cross objections for the purpose of claiming interest on the amount of solatium.

As regards submission made on behalf of the State Government regarding allotment of free plots for residential purpose to the claimants, Mr Shah submitted that such plots were also allotted to the other land holders of village Sabli whose lands were acquired and even then this Court has confirmed the award of the Reference Court for compensation at the rate of Rs.2/- plus Rs.36/- i.e. Rs.38/- per sq.mt..

7. We have given thoughtful consideration to the

rival submissions.

Taking up the first submission urged by the learned Advocate General that the judgment dated 16.2.1999 of this Court in First Appeal Nos.1498 of 1998 and connected matters is binding on the Reference Court, we are unable to accept the said submission. That group of appeals was filed by the State of Gujarat against the judgment of the Reference Court awarding additional compensation of Re.1 per sq.mt. in addition to Rs.2/per sq.mt. awarded by the Land Acquisition Officer. The effect of that judgment is merely that this Court found that the compensation awarded by the Reference Court was not required to be reduced. That group of appeals was dismissed summarily at the admission stage without issuing show cause notice to the respondent-claimants. Hence, there was no occasion for the respondent-claimants to file any cross objections. As rightly submitted by Mr RN Shah for the respondent-claimants in these groups of appeals, merely because the claimants in that group did not challenge the judgment of the Reference Court awarding compensation at the rate of Rs.3/- per sq.mt. (Rs.2/plus additional compensation of Re.1) the judgment of the learned Extra Assistant Judge, Sabarkantha in Land Acquisition Cases No.2190 of 1989 and connected matters cannot bind the other claimants who were neither parties to the said group of land acquisition cases nor to First Appeal Nos.1498 of 1998 and connected matters. In fact in paragraph 4 of the said judgment dated 16.2.1999, the Division Bench specifically made the following observations after referring to certain previous awards:-

"On the contrary if previous award is relied on, the claimants would be entitled to more than what is awarded by the Reference Court, but that question need not be gone into in absence of appeals of the claimants for enhancement of compensation."

Moreover, in the other group of cases relating to the acquisition of lands of the same village Sabli, not only the Reference Court raised the amount of compensation from Rs.2/- to Rs.38/-, but that judgment of the Reference Court came to be confirmed by a Division Bench of this Court on 15.6.2001 in First Appeal Nos.7301 of 1999 after considering the rival submissions on merits and not merely on the ground that many of the appeals covered by that group involved additional compensation of less than Rs.30,000/-. This Court specifically confirmed the judgment of the Reference Court on merits in the following terms :-

"3. The lands and buildings were acquired on account of the same going into submergence as a result of Guhai Jalagar Project. The Land Acquisition Officer awarded compensation Rs.2/per sq.mtr. for the land and Rs.150/- to Rs.300/per sq. mtr. for the construction. Upon references being made under Section 18 of the Act, the claimants led oral and documentary evidence regarding the sale instances of nearby village of Bhadreshwar which was only 3 kms. away. Similar lands were acquired from that village by notification dated 26.3.1986 and the judgment awarding compensation @ Rs.100/- per sq.mtr. was also produced at Ex.21. Evidence of sale instance of a small plot of land admeasuring 750 sq. ft. of the same village sold in the year 1980 for Rs.3,000/- was also placed on record at Exhs.28 and 29. Considering such relevant evidence of the rates fixed in the case of nearby village and making necessary adjustments in the comparable sale instances of the same village, the market value of the lands in question was fixed at Rs.38/- per sq. mtr. As for the cost of construction of houses which were also to be submerged, the evidence led on behalf of the claimants was discarded but the award of the Land Acquisition Officer having been based on the rate of building materials fixed by the Government in 1982-83, the compensation was increased by 25% in the impugned judgments in view of the normal rise in prices 10% per annum.

....

6. As seen earlier, the market value of the acquired lands was fixed by the trial Court on the basis of the relevant evidence of earlier sale instance of the same village and the compensation awarded in respect of the lands acquired from the nearby village. The compensation in respect of superstructure was increased by 25% also on the sound basis of the rising prices of building materials. Therefore, we do not find any substance in the submission that the additional compensation awarded by the impugned judgments was in any way excessive. Accordingly, even in the cases involving larger sums of compensation, no case is made out to interfere with the rates at which the compensation is fixed in the impugned judgments."

The aforesaid reasoning and conclusions of the Division Bench in First Appeal Nos.7301 of 1999 and connected matters, thus, squarely cover the second contention urged by the learned Advocate General as regards the challenge to the additional compensation awarded by the Reference Court raising it from Rs.2/awarded by the Land Acquisition Officer to Rs.38/- as determined by the Reference Court. Since all the lands covered by the said group of appeals as well as by the present groups of appeals are in same village Sabli and acquired for the same purpose under the same notification dated 20.3.1986, we do not see any reason to take a different view, more particularly, when no material is produced in evidence by the Land Acquisition Officer or the Government witnesses to show that the lands covered by these groups of appeals are different from those covered by the judgment in First Appeal No.7301 of 1999 and connected matters in terms of the location or other relevant factors for determining compensation for acquisition of lands in gamthal areas i.e. lands of house sites. In fact the entire village of Sabli came to be submerged by the aforesaid Guhai Reservoir Project.

8. The learned Advocate General, however, submitted that when the witnesses for the claimants had admitted before the Reference Court that the land losers were allotted free plots for residential purpose and the learned Government Pleader had also contended that in view of the said fact the amount of compensation awarded by the Land Acquisition Officer was proper, the Reference Court ought to have given due consideration to the said submission and ought not to have awarded additional compensation by such margin.

9. As regards the above contention, when a specific query was put to the learned Advocate General whether the claimants in the other groups of appeals already decided by this Court by the aforesaid judgment dated 15.6.2001 in First Appeal No.7301 of 1999 and connected matters were also given free plots for construction of houses, the learned Advocate General fairly stated that that was so, but that aspect was not brought to the notice of this Court in First Appeal No.7301 of 1999.

Although the submission made by the learned Advocate General would have required serious consideration, we do not find any specific material having been brought on record by the Government about the area and location of land allotted to the land losers for

the construction of houses. In that view of the matter and also in view of the fact that the similarly situate claimants in the other groups of appeals were also allotted such free plots for the construction of houses, we are not inclined to disturb the award of the Reference Court giving rise to these appeals except that that aspect will be borne in mind while considering the respondents' prayer for directing the authorities to pay interest on the amount of solatium on the basis of the decision of the Apex Court in Sunder vs. Union of India (supra).

10. In Sunder vs. Union of India, 2001 (7) SCC 221 = 2001 (3) GLH 446, a Constitution Bench of the Apex Court held that the the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a land owner and, therefore, interest under Section 28 of the Act is payable on the compensation awarded including solatium and not merely on the market value of the land. Hence, interest awardable under Section 28 would include within its ambit interest both on the market value and the statutory solatium.

In Vijay Cotton and Oil Mills Ltd. vs. State of Gujarat, AIR 1991 SC 656, the Apex Court held that the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act. The amount of compensation under Section 23(1) which is an Award-Decree under Section 26 is, therefore, subject to the rules of procedure and limitation, but those rules of procedure are hand maiden of justice and limitation cannot come in the way of the claimants praying for interest under Section 26 at any stage of the proceedings and that it was not necessary for them to file separate appeals/ cross objections for the purposes of claiming interest under Section 28 or Section 34 of the Act; that the claimants can claim interest even in the State appeal and the fact that the cross objections filed by the claimants were dismissed as time barred is wholly irrelevant.

11. On the basis of the aforesaid principles, another Division Bench of this Court has already held in Special Land Acquisition Officer vs. Kodarbhai Jenabhai, 2002 (2) GLH 435, that the consequential benefits which flow in view of the award shall be given to the claimants including the interest on solatium as held by the Apex Court in Sunder vs. Union of India (supra).

12. On the basis of the aforesaid decisions, we would have considered the respondent-claimants' oral prayer for grant of interest on the amount of solatium, but we

decline to grant the said prayer. Firstly, because, the respondent-claimants were given free plots for construction of houses as admitted by them before the Reference Court and since that aspect does not seem to have been considered by the Reference court, some adjustment would have been required to be made in the amount of compensation. However, that would have required this Court to remand the matters to the Reference Court. As the lands in question were acquired under the notification dated 20.3.1986 about 19 years ago, and since the award was also passed by the Land Acquisition Officer in the year 1988, we do not think that the order for remand should be passed after such lapse of almost two decades. Secondly, the claimants in the other groups of appeals decided by this Court on 30.3.2000 and on 15.6.2001 including First Appeal No.7301 of 1999 have also not been awarded any interest on the amount of solatium. We are, therefore, justified in treating the respondent-claimants' in the present group of appeals on parity with the respondent-claimants in the other groups of appeals decided earlier in the years 2000 and 2001, both in the matter of not reducing the additional compensation awarded by the Reference Court notwithstanding the fact that the land losers were allotted free plots for construction of houses and also in the matter of not granting their prayer for interest on the amount of solatium.

12A. In First Appeal Nos. 2037, 2040, 2105, 2109, 2117 to 2121, 2125, 2127, 2163, 2185 and 2186 of 2003, the respondent-claimants are shown as not served, but since we are dismissing the appeals, it is not necessary to wait for service on those respondent-claimants.

13. In view of the above discussion, we do not find any valid reason to interfere with the impugned judgments and awards and, therefore, the appeals are dismissed, but with no order as to costs.

14. Since the acquisition proceedings had started way back in the year 1986, it is expected that the amounts of compensation with solatium and interest shall be paid to the claimants as expeditiously as possible and preferably within three months from the date of service of this judgment upon the authorities concerned.

(M.S. SHAH, J.)

(D.H. WAGHELA,J.)

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